

1 **RIMAC MARTIN, P.C.**
 2 ANNA M. MARTIN - CSBN 154279
 2 KEVIN G. GILL - CSBN 226819
 3 *amartin@rimacmartin.com*
 3 *kgill@rimacmartin.com*
 4 1051 Divisadero Street
 4 San Francisco, California 94115
 5 Telephone (415) 561-8440
 5 Facsimile (415) 561-8430

6 Attorneys for Defendant
 7 UNUM LIFE INSURANCE COMPANY
 7 OF AMERICA

8

9 **UNITED STATES DISTRICT COURT**

10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11

12 ***E-FILING***

13 SHERI GARAY,)
 14) CASE NO. **3:08-cv-01059 SBA**
 15 Plaintiff,)
 16) [PROPOSED] ORDER GRANTING
 16 vs.) DEFENDANT'S MOTION FOR
 17) PARTIAL SUMMARY JUDGMENT ON
 17 UNUM LIFE INSURANCE COMPANY OF) THE APPLICABILITY OF THE
 18 AMERICA, and DOES 1-10,) EMPLOYEE RETIREMENT INCOME
 18 Defendants.) SECURITY ACT (ERISA)
 19) Date July 22, 2008
 19) Time: 1:00 p.m.
 20) Ctrm: 3
 20) The Honorable Saundra Brown Armstrong

21

22 On July 22, 2008, the Court heard argument on defendant's motion for partial summary
 23 judgment on the applicability of ERISA. Having considered the arguments of counsel and the
 24 papers submitted, the Court hereby GRANTS defendants' motion.

25 Defendant UNUM LIFE INSURANCE COMPANY OF AMERICA moves for partial
 26 summary judgment based on the following reasoning:

27 (1) Plaintiff, doing business as Site For Sore Eyes, purchased and maintained a Group
 28 Long Term Disability Plan ("the Plan") from defendant insurer;

DISCUSSION

7 A group long term disability benefits plan that is established or maintained by an employer
8 for the purpose of providing disability insurance for its participants is governed by ERISA. See
9 *Peterson v. American Life & Health Ins. Co.*, 48 F.3d 404, 408 (9th Cir. 1995) (quoting 29 U.S.C.
10 § 1002(1)). Any group benefits plan that covers one or more employees in addition to the business
11 owner is governed by ERISA. *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541
12 U.S. 1, 6 (2004).

13 The Court finds that plaintiff, doing business as Site For Sore Eyes, established and
14 maintained the Group Long Term Disability Benefits Plan under which she filed a claim for benefits
15 for the purpose of providing disability insurance for herself and her employees. Accordingly, the
16 group benefits plan is governed by ERISA.

17 “There are two strands to ERISA’s powerful preemptive force. First, ERISA section 514(a)
18 expressly preempts all state laws ‘insofar as they may now or hereafter relate to any employee benefit
19 plan,’” though state laws which regulate insurance, banking, or securities are saved from this
20 preemption. *Cleghorn v. Blue Shield of California*, 408 F.3d 1222, 1225 (9th Cir. 2005) (quoting
21 29 U.S.C. §§ 1144(a), (b)(2)(A)). “Second, ERISA section 502(a) contains a comprehensive scheme
22 of civil remedies to enforce ERISA’s provisions.” *Id.* (citing 29 U.S.C. § 1132(a)).

23 Section 502(a) provides in pertinent part: “[a] civil action may be brought . . . by a participant
24 or beneficiary . . . to recover benefits due to him under the terms of his plan” 29 U.S.C. §
25 1132(a). As a result, a “state cause of action that would fall within the scope of this scheme of
26 remedies is preempted as conflicting with the intended exclusivity of the ERISA remedial scheme,
27 even if those causes of action would not necessarily be preempted by section 514(a).” *Cleghorn*, 408
28 F.3d at 1225 (citing *Aetna Health Inc. v. Davila*, 542 U.S. 200, 214, n. 4 (2004)).

Because the Plan here is governed by ERISA, plaintiff's sole available cause of action is a "civil action . . . to recover benefits due" under the terms of the Plan. 29 U.S.C. § 1132. ERISA specifically preempts Plaintiff's state law causes of action and prayer for extra-contractual remedies.

CONCLUSION

6 For the foregoing reasons and for good cause shown: Defendant's motion for partial
7 summary judgment is GRANTED. The insurance policy at issue is governed by ERISA, and
8 plaintiff's sole available cause of action is a "civil action . . . to recover benefits due" under the
9 terms of the Plan, where a trial by jury and extra-contractual damages are unavailable.
10 Correspondingly, plaintiff's state law causes of action and prayer for extra-contractual damages
11 are dismissed.

IT IS SO ORDERED.

Dated:

The Hon. SAUNDRA BROWN ARMSTRONG
United States District Judge